



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

May 22, 2003

Ms. Tamara Pitts
Assistant City Attorney
City of Fort Worth
1000 Throckmorton Street
Fort Worth, Texas 76102

OR2003-3453

Dear Ms. Pitts:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181487.

The City of Fort Worth (the "city") received three requests for information concerning a named firefighter. You claim that the requested information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have considered your arguments and have reviewed the representative sample of information submitted.¹

Section 552.101 of the Government Code excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. Section 143.089 contemplates two different types of personnel files, a fire fighter's civil service file that the city's civil service director or the director's designee is required to maintain, and an internal file that the fire department may maintain for its own use. Local Gov't Code § 143.089(a), (g). In cases in which a fire department takes disciplinary action against a fire fighter, it is required by section 143.089(a)(2) to place records relating to the investigation and disciplinary action in the fire fighter's civil service file maintained under section 143.089(a). Information that reasonably relates to a fire fighter's employment relationship with the fire department and that is maintained in a fire department's internal file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio*

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

v. San Antonio Express-News, 47 S.W.3d 556 (Tex. App.—San Antonio 2000, pet. denied); *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946, 949 (Tex. App.—Austin 1993, writ denied). The fire department may not release any information contained in the department file to any person. Local Gov't Code § 143.089(g).

You state that the information at issue is maintained in the fire department's internal file pursuant to section 143.089(g). Further, you indicate that the responsive information relates to investigations that did not result in disciplinary actions. Based upon your representations and our review of the submitted information, we conclude that this information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101. The department also requests that we issue a previous determination with respect to records regarding information that did not result in disciplinary action according to §§ 143.051-055 of the Local Government Code. We decline to do so at this time.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Heather Pendleton Ross
Assistant Attorney General
Open Records Division

HPR/sdk

Ref: ID# 181487

Enc: Submitted documents

c: Mr. Artie Dawson
721 Thompson Street
Everman, Texas 76140
(w/o enclosures)